



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

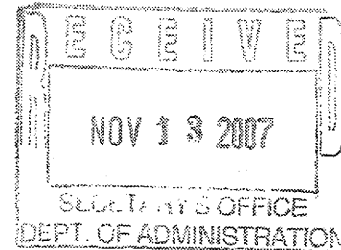
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November 12, 2007

Cari Ann Renlund
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Dear Cari Anne:

You ask whether Wisconsin law permits registers of deeds to accept electronically scanned documents for recording purposes. You also suggest that some registrars have accepted certain types of documents electronically, such as satisfactions, partial releases, but not others, including deeds, easements and other transfers of property rights.

In my opinion, due to the passage of uniform law, Wisconsin law does permit the recording of electronically scanned documents.

Wisconsin has enacted two uniform acts relevant to the use of electronic documents in legal transactions. In 2003, the Legislature passed the Uniform Electronic Transactions Act ("UETA"). Subsequently, in Act 421 of 2005, Wisconsin enacted the Uniform Real Property Electronic Recording Act ("URPERA"). The two statutes are codified at Wis. Stat. §§ 137.11-137.26 and 706.25, respectively.

The UETA provisions in Wis. Stat. ch. 137 recognize the legal validity of electronic records, signatures and contracts and provide that a contract or a written document may not be denied legal effect based solely on the fact that it is an electronic record. *See* §§ 137.15(2), (3). It also provides that requirements of a signature on a document are satisfied by an electronic signature. *See* Wis. Stat. § 137.15(4).

UETA has been enacted in most states. Registers of deeds in a few states asked their Attorney General whether UETA sufficed to permit or require the recording of electronically scanned documents in their offices relating to real property transfers. Some Attorneys General opined that UETA did not effect such a change. Those Attorneys General reasoned that UETA did not address or supersede the technical requirements in their states for the recording of legal documents, which, depending on the jurisdiction, might include a specific paper size, an

"original" document, or paper. *See* Op. Texas Att'y Gen. G-0228 (August 5, 2004); Op. Ark. Att'y Gen. 2006-040 (April 28, 2006); Op. S.C. Att'y Gen. (October 31, 2005) (2005 WL 2985562). Although the question was never addressed in Wisconsin through an Attorney General opinion or otherwise, Wisconsin's recording statute does not include those technical requirements. Several Wisconsin counties began accepting electronic documents as early as 2003. *See* <http://www.wrdaonline.org/RealEstateRecords/ElectronicRecording.htm#BACKGROUND> (web page of the Wisconsin Register of Deeds Association, giving background on electronic recording in Wisconsin).

In an attempt to close the gap left by UETA, the National Conference of Commissioners on Uniform State Laws drafted URPERA. That legislation explicitly addresses the recording of electronic documents. The Attorneys General who opined that UETA did not establish the validity of electronic documents for recording documents suggested that URPERA would accomplish that result.

Because Wisconsin has adopted UETA and URPERA, I believe it is plain that electronically scanned documents meet state law requirements for recording.

Wisconsin Stat. ch. 706 controls the recording of conveyances of real property. The formal requisites for such recording include that the document:

- (a) Bear such signatures as are required by law;
- (b) Contain a form of authentication authorized by s. 706.06 or 706.07;
- (c) Identify, to the extent that the nature of the instrument permits, and in form and terms which permit ready entry upon the various books and indexes publicly maintained as land records of such county, the land to which such instrument relates and the parties or other persons whose interests in such land are affected. . . .

Wis. Stat. § 706.05(2).

Wisconsin's adoption of UETA and URPERA resolves any barriers to electronic recording presented by subsections (a) and (b) of Wis. Stat. § 706.05. Together, those statutes provide that electronic documents satisfy any statutory requirements for recording that the document be on paper, be an original document, or contain a signature. *See* Wis. Stat. §§ 137.15; 706.25(1). Thus, the requirement under Wis. Stat. § 706.05(2)(a) that real property transactions be "signed" is satisfied by an electronic document. The requirement under Wis. Stat. § 706.05(2)(b) that conveyances be authenticated is satisfied by an electronic signature of the person authorized to perform that act. *See* Wis. Stat. § 705.25(2).

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Further, there appears to be no question that an electronically scanned document is an "electronic document" within the meaning of URPRA. The statute defines "electronic document" as a document that is received by the register of deeds in an electronic form. *See* Wis. Stat. § 706.25(1)(c). That definition includes a document that is scanned into the computer and transmitted electronically to a register of deeds.

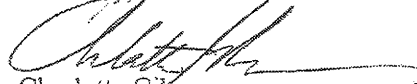
You suggest that some registers of deeds are accepting some types of documents for recording, such as satisfactions, partial releases and assignments, but not others, including deeds, easements and other transfers of property rights. This distinction appears to reflect two concerns: the recording requirement in Wis. Stat. § 706.10 requiring that conveyances to be recorded include a transfer fee return under Wis. Stat. § 77.22; and, as a policy matter, a hesitance to accept electronic recording where the transfer of property rights is at issue.

Wisconsin Stat. § 77.22(1) requires that a transfer return be filed at the time a conveyance is presented for recording. The Legislature has delegated to the Department of Revenue—not to the registers of deeds—the task of determining the form required for the return. *See* Wis. Stat. § 77.22(2). Over the last two years, DOR has developed an electronic transfer tax form. Recordors who file that form electronically with DOR receive a receipt that they can then submit to the register of deeds. That receipt can be scanned along with the rest of the document to be recorded and transmitted electronically to the register.

The second concern, a hesitance to accept documents electronically that involve the transfer of property rights, reflects a concern about the security offered by electronic recording. It is beyond the scope of this letter to advise you about that policy issue. I am advised, however, that the Electronic Recording Council attached to your office has developed confidence in accepting such documents electronically as the registers have gained experience with electronic recording and have developed a trusted submitter procedure to verify the identity of the party recording the document.

Thank you for allowing us to address your questions about electronic recording. Please feel free to contact me if you need additional information.

Sincerely,



Charlotte Gibson
Assistant Attorney General

CG:lf